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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/003,925	10/30/2001	William J. Taylor	P-9211.00	7761

27581 7590 04/27/2004

MEDTRONIC, INC.
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MINNEAPOLIS, MN 55432-5604

EXAMINER

LAYNO, CARL HERNANDZ

ART UNIT	PAPER NUMBER
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3762

11

DATE MAILED: 04/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/003,925

Applicant(s)

TAYLOR ET AL.

Examiner

Carl H. Layno

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Art Unit: 3762

DETAILED ACTION

1. Acknowledgment is made of applicant's amendment and one month extension of time which were received by the Office on February 20, 2004. These documents have been made of record in the file as Paper Nos.9 and 8, respectively.

2. Claims 1-36 are active.

Drawings

3. Applicant's formal drawings were received by the Office on February 20, 2004 and have been made of record in the file as part Paper No.10. These **drawings have been approved** by the Examiner.

1.131 Declaration

4. Acknowledgment is made of the receipt of applicant's declaration (Paper No.10) filed under 37 CFR 1.131 which is a sworn statement for antedating a prior art references cited by the Examiner in Paper No.7. Although the format of the declaration is acceptable, the declaration is deficient in that it does not comply with paragraph (b) of 37 CFR 1.131, which specifically states, "Original exhibits of drawings or records, or photocopies thereof, ***must accompany and form part of the affidavit or declaration or their absence satisfactorily explained.***" The Examiner could find no accompanying exhibits or explanations with applicant's 1.131 declaration.

Claim Rejections - 35 USC § 102 & 103

5. In view of the deficiency of applicant's 37 CFR 1.131 declaration, the Examiner still believes the following 35 U.S.C 102 and 103 rejections, cited previously in the last Office action (Paper No.7), are applicable:

6. Claims 1, 3, 6-9, and 11-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Spillman '350-A1.

7. Claims 1, 3-11, 13, 14, 16, 18-25, 27, 29, 30, 32, 33, 35, and 36 are rejected under 35 U.S.C. 102(e) as being anticipated by Frysz et al '716-A1.

8. Claims 2, 17, 31, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frysz et al '716-A1 in view of Kyle '207.

9. Claims 26 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frysz et al '716-A1 in view of Spillman '350-A1.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3762

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl H. Layno whose telephone number is (703) 308-3694. The examiner can normally be reached on Monday thru Thursday from 9 AM to 6 PM and every other Friday between 9AM and 5PM. A voice mail or E-mail message (carl.layno@uspto.gov) may be left if desired.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes, can be reached on (703) 308-5181. All faxed correspondence should be sent to the Office's new Official FAX number (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Legal Instruments Examiner (LIE) Brenda Webb whose telephone number is (703) 305-7520.

Application/Control Number: 10/003,925

Page 5

Art Unit: 3762

Carl A. Layno

CARL LAYNO
PRIMARY EXAMINER

CHL

4/23/04